United States District Court
Western District of Texas
San Antonio Division

Vincent Jobo, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 5:25-CV-00687-JKP-HJB

Federal[1] Respondents' Response to Petitioner's Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order dated June 25, 2025, directing service and ordering a response within seven days of service. *See* ECF Nos. 6; 8 (confirming CMRRR delivery on June 30, 2025). In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Jobo ("Petitioner") seeks release from civil immigration detention, claiming that his 8-month post-removal-order detention has been become indefinite, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a final order of removal from October 29, 2024, which mandated his detention under 8 U.S.C. § 1231(a) during the 90 days following the entry of his final order. Ex. A (ERO Declaration) ¶¶ 7-8. Detention can be extended past the removal period in the exercise of discretion where removal is reasonably foreseeable. 8 U.S.C. § 1231(a)(6). ICE decided in its discretion to continue Petitioner's detention past the 90-day removal period, which is a decision

[1] The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. The Federal Respondents, however, have detention authority over aliens detained under 8 U.S.C. § 1231(a).

protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

Petitioner has not shown here that there is no likelihood of removal in the reasonably foreseeable future. Even if Petitioner were able to make such a showing, the burden would shift to Respondents who can show that removal to South Africa is, in fact, significant likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of South Africa. ECF No. 1 at ¶ 1. Petitioner entered lawfully on a visa in 2017, but after three separate encounters with ICE while in criminal custody in 2019, ICE issued him a Notice to Appear ("NTA") in immigration court. *See id.* ¶ 2; Exhibit A (ERO Declaration) ¶ 3-4. After failing to appear for his removal hearing in 2023, Petitioner was issued a final order of removal *in absentia*. ECF No. 1 ¶ 2; Exhibit A (ERO Declaration) ¶ 3-4.

In October 2023, ICE took custody of Petitioner and detained him at the South Texas ICE Processing Center (STIPC). *Id.* ¶ 3. Once in ICE custody, Petitioner filed a motion to reopen his *in absentia* order based on lack of notice, which triggered an automatic stay of his removal order, meaning that ICE could not remove him. *Id.* ¶ 5. The court granted the motion and reopened proceedings, allowing Petitioner to file an application for asylum on July 29, 2024. *Id.* ¶ 5-6. Ultimately, an immigration judge denied Petitioner's applications for relief from removal and ordered him removed to South Africa. *Id.* ¶ 7. This order became final on October 29, 2024, when Petitioner and DHS jointly waived appeal. *Id.* ¶ 8. For the following 90 days, Petitioner's detention was mandated by statute during the statutory removal period. 8 U.S.C. § 1231(a).

ICE submitted a travel document request to the South African embassy in December 2024, which included the required DHA-9 form that was signed on the front of the form and again on the fingerprint form. Ex. A (ERO Declaration) ¶ 9. ICE has been in constant communication with

the South African embassy (multiple times per month) since then to finalize efforts to secure a travel document. *Id.* ¶¶ 11-30. On June 13, 2025, the South African embassy conducted a virtual interview with Petitioner. *Id.* ¶¶ 26-27. The travel document request remains pending, but ICE does not anticipate any impediments to its issuance. *Id.* ¶ 29-31.

II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Under § 1231, the removal period can be extended in a least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

III. There Is No Good Reason to Believe That Removal to South Africa Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show "good reason" to believe that removal to South Africa is unlikely. In *Zadvydas*, the U.S. Supreme Court held that § 1231(a)(6) "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States" but "does not permit indefinite detention." 533

U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute." *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite "good reason," the burden will not shift to the government to prove otherwise. *Id.*

The "reasonably foreseeable future" is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21–CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioner's burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

There is no dispute that Petitioner's removal order has been final since October 2024 and that ICE has been making repeated efforts to secure a travel document from South Africa. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. *Id.* ¶¶ 86–98. Petitioner, however, relies on only conclusory allegations and speculation to argue that his detention is "indefinite." *Id.* ¶¶ 8, 73, 97.

In addition to fingerprinting issues, Petitioner cites "increasingly tense" diplomatic relations between the U.S. and South Africa as the basis for his conclusion that his chance of removal is "remote." *Id.* ¶ 47. Petitioner nonetheless concedes that in the eight months he has been detained in post-order custody, ICE has tried to execute his removal order at least six times. *Id.* ¶ 55. Because the efforts have not been fruitful yet, Petitioner argues his detention has become indefinite. *Id.*

Petitioner's conclusory and speculative claims are wholly insufficient to meet his burden of proof under *Zadvydas*. See *Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014). As such, Petitioner cannot meet his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. See *Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government travel documents). The burden of proof, therefore, does not shift to Federal Respondents to prove that removal is likely.

Even if the burden did shift to ICE, Petitioner concedes that ICE is making continuous efforts to obtain his travel document from South Africa. Indeed, ICE even notified the State Department of the delays in May 2025. Ex. A (ERO Declaration) ¶ 24. Once the travel document issues, ICE anticipates no impediments to the timely execution of Petitioner's removal order. Ex. *Id.* ¶ 31. Notably, the South African embassy has not declined to issue a travel document in this case. Instead, the embassy has remained in contact with ICE consistently since December 2024 trying to confirm Petitioner's identity through fingerprints, and most recently, through a personal interview on June 13, 2025. *Id.* ¶ 27.

Moreover, ICE is complying with post-order-custody-review regulations, and Petitioner will have another custody review around the end of this month should he remain detained. *Id.* ¶¶ 10, 16, 23, 25, 32. There is no basis for a due process argument here when ICE is complying with *Zadvydas* standards and providing Petitioner sufficient procedural safeguards throughout his post-removal detention.

IV. Conclusion

There is no good reason to believe that removal to South Africa in the reasonably foreseeable future is unlikely. Continued detention under 1231(a)(6), therefore, is lawful. Accordingly, the Court should deny this petition.

Respectfully submitted,

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